

operations and facilities covered by this contract. Any such program shall comply with applicable Federal, state, and local requirements.

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 90-27, FAR Case 93-307, Item III]

RIN 9000-AG42

Federal Acquisition Regulation; Ozone Executive Order

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule which amends the Federal Acquisition Regulation (FAR) to provide policy for the acquisition of items that contain, use, or are manufactured with ozone-depleting substances. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective Date:* May 31, 1995.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-27, FAR case 93-307 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-27, FAR case 93-307.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency (EPA) promulgated 40 CFR Part 82, Subpart D (rule) to satisfy EPA's obligation under Section 613, Title VI of the Clean Air Act Amendments of 1990. The EPA rule requires each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of Title VI of the Clean Air Act and to maximize the substitution of safe alternatives for ozone-depleting substances as identified under Section 612 of the Act. The EPA rule also requires each department, agency, and instrumentality of the United States to certify to OMB, within twelve months of the final publication of the rule, that its procurement regulations have been modified in accordance with the rule. The EPA rule complements Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances (58 FR 21881, April 23, 1993). Both the Executive Order and the EPA rule require that new contracts provide that any acquired products containing or manufactured with class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, be labeled in accordance with Section 611 of the 1990 amendments to the Clean Air Act.

This interim FAR rule implements the requirements of Executive Order 12843 and 40 CFR Part 82. The rule contains two clauses; one clause requires contractors to label products containing ozone-depleting substances, and the other clause requires contractors to comply with Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the contract. 42 U.S.C. 7671g addresses a national recycling and emission reduction program, and 42 U.S.C. 7671h addresses servicing of motor vehicle air conditioners.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Clean Air Act requirements are already applicable to companies in industries supplying goods and services made with or containing ozone-depleting substances. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart

will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-27, FAR Case 93-307), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Executive Order 12843, which required FAR revisions by October 18, 1993, and 42 CFR Part 82, which required agency acquisition regulation revisions by October 24, 1994. Further, 42 CFR 82.84 states that, for agencies subject to the FAR (48 CFR Chapter 1), amendment of the FAR consistent with 42 CFR 82.84 shall satisfy, for those agencies, the requirement of 42 CFR 82.84 to revise agency acquisition regulations. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of a final rule.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: May 24, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 23 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 23.8 is added to read as follows:

Subpart 23.8—Ozone-Depleting Substances

Sec.

- 23.800 Scope of subpart.
- 23.801 Authorities.
- 23.802 Definitions.
- 23.803 Policy.
- 23.804 Contract clauses.

23.800 Scope of subpart.

This subpart sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances. This subpart does not apply to contracts performed outside the United States, its possessions, and Puerto Rico.

23.801 Authorities.

- (a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).
- (b) Executive Order 12843, April 21, 1993.
- (c) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

23.802 Definitions.

Class I substance means any substance designated as class I by EPA (40 CFR part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

Class II substance means any substance designated as class II by EPA (40 CFR part 82), including but not limited to hydrochlorofluorocarbons.

23.803 Policy.

- (a) It is the policy of the Federal Government that Federal agencies:
 - (1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and
 - (2) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.

(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall ensure that acquisitions:

- (1) Comply with the requirements of Title VI of the Clean Air Act, Executive Order 12843, and 40 CFR 82.84(a) (2), (3), (4), and (5); and
- (2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1).

23.804 Contract clauses.

- (a) The contracting officer shall insert the clause at 52.223-11, Ozone-

Depleting Substances, in solicitations and contracts for supplies containing or manufactured with class I or class II ozone-depleting substances or containers of class I or class II ozone-depleting substances.

(b) The contracting officer shall insert the clause at 52.223-12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using class I or class II ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicle, refrigerators, chillers, or freezers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. and 4. Section 52.223-11 and 52.223-12 are added to read as follows:

52.223-11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 1995)

(a) Definitions.

Class I substance, as used in this clause, means any substance designated as class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

Class II substance, as used in this clause, means any substance designated as class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) As required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, the Contractor shall label products which contain a class I or class II ozone-depleting substance or are manufactured with a process that uses class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, as follows:

"WARNING: Contains (or manufactured with, if applicable) _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere."

*The Contractor shall insert the name of the substance(s).

(End of clause)

52.223-12 Refrigeration Equipment and Air Conditioners.

As prescribed in 23.804(b), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 25 and 52**

[FAC 90-27, FAR Case 95-601, Item IV]

RIN 9000-AG43

Federal Acquisition Regulation; Addition of Three New European Community Countries

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a final rule to add Austria, Finland, and Sweden to the FAR definition of "European Community (EC) Country" and to the definition of "sanctioned member state of the EC". The United States Trade Representative has requested this action be taken as soon as possible because these countries have joined the EC on January 1, 1995. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Effective Date: May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McAndrew at (202) 501-1474 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-27, FAR case 95-601.

SUPPLEMENTARY INFORMATION:**A. Background**

By letter, dated December 21, 1994, the General Counsel, United States Trade Representative Office, requested that three countries, Austria, Finland and Sweden, be added to sections 25.401 and 25.1001 because these countries became members of the European Union on January 1, 1995. The General Counsel requested these changes as quickly as possible after the new year.

B. Regulatory Flexibility Act

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory